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EXAMINER

BUGG, GEORGE A

ART UNIT PAPER NUMBER

2612

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/663,405
Filing Date: September 16, 2003
Appellant(s): DAVIS ET AL.

Richard A. Bachand Reg. No. 25,107
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/24/2006 appealing from the Office action
mailed 04/25/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

6, 580, 367	ROACH	6-2003
6, 472, 771	FRESE et al	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 9, 13, and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. First off, with regard to the paraphrased added limitation "direct transmission of the hazard alert from the vehicle to emergency personnel responding to the hazard event", nowhere does Applicant's specification disclose this feature. Paragraph 22 merely states that remote communication is possible, and lists a menagerie of physical locations, but never the emergency personnel responding to the scene of the hazard event. Furthermore, as seen in Figure 1, even if Applicant had disclosed the above features, the transmission of

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information goes from the vehicle through the satellite, and then to the remote location.

This does not constitute direct transmission.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,580,367 B2 to Roach in view of US Patent No. 6,472,771 B1 to Frese et al.

1. As for claims 1, 9, 13, and 17, Roach teaches (column 7, lines 10-35) that a dispatch system immediately transmits information to a remote command center via GPS upon detection of an emergency situation. This information includes how to handle an emergency situation involving this specific vehicle, and its load. The dispatch device, shown as element 28 in Figure 2, is contained in the vehicle transporting the hazardous substance. Once a hazard event is detected, fire, smoke, overturned hauler, by the sensor 60, shown in Figure 5 as part of the dispatch system 28, a hazardous material alert is automatically transmitted, including information as to the nature of the substance being carried. ***With regard to the added limitations of claims 1, 9, 13, and 17, while the Roach reference may not specifically teach these limitations, and Applicant's specification may lack proper support, the Frese reference***

teaches, that his system can be used for fleet management purposes, in Table 1, and also that vehicle to vehicle communication is possible, in columns 2-3, lines 56-9. This reference is being combined with the teachings of Roach to show that vehicle to vehicle transmission of information is well known in the art and therefore would have been obvious to one of ordinary skill to incorporate such a teaching into Applicant's invention, for the purpose of communicating information directly to its intended target rather than having it relayed through an intermediate party.

2. With regard to claims 2, 10, and 15 as shown above, and further stated in column 8, lines 17-20 of Roach, the sensor 60 can determine an impact, fire, smoke, if the transport vehicle has turned over on its side.

3. As for claims 3, 11, and 14 in column 7, lines 40-43, as well as column 8, lines 20-27, Roach discloses a manual switch 40, which may be activated by the vehicle operator to transmit data from the dispatch system 28.

4. As for claims 4, 12, and 16 it has been shown, and can further be seen in Figure 2, of Roach, that a hazard event is detected at the command control center 24, in response to information transmitted from the vehicle, which is in a remote location with respect to the control center.

5. With regard to claim 5, while it has been shown above that the system of Roach discloses at least the use of AM, FM and police band transmitters, the reference does not specifically teach the range recited in claim 5. However, Applicant has pointed out in his Specification (section 26) that it is not only desirable for the system to transmit

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over a short range, but up to hundreds of miles. It is the contention of the Examiner that a transmission range of a few feet, up to several hundred miles is an obvious embodiment of the system, and furthermore can be carried out by the GPS of the Roach system. Therefore, it would have been obvious to one of ordinary skill in the art to employ various strength transmitters for the purpose of creating a system with greater transmission versatility.

6. With regard to claim 6, the Roach reference states (column 4, lines 45-50) that the command control center can notify and dispatch rescue crews, medical personnel, police and fire personnel, and notify the public via radio, television, and Internet. Therefore, at the very least AM, FM, and police band transmitters are inherently disclosed.

7. As for claim 7, as previously stated, once a hazard event is detected, by sensor 60, the dispatch system 28, which is part of the vehicle 22, and constitutes a vehicle system, automatically transmits data about the event, and substance being hauled to the command control center 24.

8. With regard to amended claim 8, column 7, lines 50-52, of Roach, teach that upon detection of a hazardous event, the information dispatch system, which is part of the vehicle, is activated.

9. As for claims 18-20, with regard to claim 6 above, one or more of the entities listed therein would receive notification from the command control center (remote location) in response to the hazard alert. Notification of the hazard to the proper authorities would in fact be a reply transmission in response to the hazard alert.

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Furthermore, the reply transmission would be received via AM, FM, police band, RF, etc... which all employ transmitters and receivers.

Double Patenting

10. Applicant is advised that should claim 7 be found allowable, claim 8 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

(10) Response to Argument

Appellant's Argument

With regard to claims 1, 9, 13, and 17, Appellant states, on pages 4-6 of the Appeal Brief, that Sections 21, 23, and 27, of Appellant's Specification, clearly comply with the written description requirements set forth by 35 USC 112, first paragraph, with regard to the limitation present in all claims, requiring direct transmission to emergency personnel responding to the hazard event, and that the Examiner's interpretation of the subject matter is unreasonable.

Examiner's Response

While the Examiner does not disagree that Section 27 of Appellant's Specification states that the hazard alert may be received by emergency and rescue

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personnel, it **does not** specifically disclose direct transmission from the vehicle experiencing the hazard event to emergency personnel responding to the event. The definition of directly, according to Merriam-Webster's tenth addition Collegiate Dictionary is as follows: proceeding from one point to another in time or space without deviation or interruption. Figure 1 clearly shows information being routed through a satellite 108, and then relayed to remote location 102, which Appellant defines in Section 21 of the Specification, as a central communication point, or central station, which is clearly a fixed location, not a responder, remote from the scene of the event. In turn 102 relays or passes information along to remote locations 104, and 106. Sections 21 and 22 disclose these remote locations as designated offices, shippers, consignees, government authorities, family members, and interested third parties. None of these remote locations are clearly defined as emergency personnel responding to the hazard event, nor are they directly receiving the hazard alert. The term governmental authorities, referred to in Section 21 of the Specification, in its broadest reasonable interpretation, does not necessarily have to be responders to the scene, but may in fact be their own respective central stations or precincts, and the disclosure does not prove otherwise. Additionally, Section 23 of Appellant's Specification, states that the MCT, which is part of vehicle 100, can communicate with remote locations 104 and 106, without communicating through remote location 102, however, as seen in Figure 1, even when the signal is not relayed through remote location 102, it still goes through satellite 108. Nowhere is it shown that vehicle 100 **communicates directly with any of the remote locations 102, 104, and 106, whether they are emergency personnel**

responding to the hazard event or not. It is further the contention of the Examiner that the claims have been interpreted in light of the Specification, and that the broadest reasonable interpretation of the claimed limitations are simply not properly supported by Appellant's Specification, as shown above.

Appellant's Argument

On pages 7-9 of Appellant's Brief, it is argued that the combination of the Roach and Frese Patents (art of record) is improper, does not teach the claimed invention set forth by Appellant, and that column 3, lines 43-45 and column 4, ones 62-67 of Frese, teach away from claimed subject matter.

Examiner's Response

The cited passages of the Frese reference clearly teach vehicle-to-vehicle communication, which is synonymous with a vehicle involved in a hazard event communicating to a vehicle responding to the scene of the event. The Frese reference clearly teaches that communication between vehicles is possible and known in the art. The combination was made to show, that vehicles involved in fleet management, which can include a fleet of fire trucks, ambulances, patrol cars, etc... are capable of communicating information within the infrastructure of the system. Furthermore, since both Roach and Frese are in related fields of endeavor, the combination is proper. It should also be noted, that the passages cited by Appellant in columns 3 and 4 of the Frese reference, merely teach that access to certain information is protected by a firewall. In no way does either of these passages teach that vehicle-to-vehicle communication is impossible. On the contrary, they teach that unauthorized personnel

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cannot access certain information. This would be useful in preventing competitors from accessing shipping information, but in no way does it teach that vehicle to vehicle communication is negated.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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